

REGULATORY ALERT

NATIONAL CREDIT UNION ADMINISTRATION
1775 DUKE STREET, ALEXANDRIA, VA 22314

DATE: August 2009 **NO:** 09-RA-07

TO: All Federally-Insured Credit Unions

SUBJECT: Amendments to Regulation Z, Truth in Lending

ENCL: Appendix – Credit CARD Act & Effective Dates

REF:

1. Credit Card Accountability, Responsibility, and Disclosure Act of 2009, Pub. L. 111-24, 123 Stat. 1734 (May 22, 2009)
2. 74 Fed. Reg. 36077, 36082 (July 22, 2009)

Dear Board of Directors:

The Board of Governors of the Federal Reserve System (FRB) published, on July 22, 2009, an interim final rule amending Regulation Z (Truth in Lending) implementing provisions of the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (Credit CARD Act). In May 2009, the Credit CARD Act amended the Truth in Lending Act (TILA) and other statutes to establish fair and transparent practices for open-end consumer credit plans, including credit cards.

The Credit CARD Act's amendments to TILA go into effect in three stages. **The interim final rule implements the provisions of the Credit CARD Act that go into effect on August 20, 2009.** The remaining provisions go into effect on February 22, 2010 or August 22, 2010 and will be implemented by the FRB at a later date. The Appendix to this alert provides a list of provisions relative to creditors and their effective date.

The interim final rule implements the requirements in the Credit CARD Act as follows:

- Creditors must provide written notice to consumers 45 days before increasing an annual percentage rate on a credit card account or making a significant change to the terms of a credit card account.
- Creditors must inform consumers in the same notice of the right to cancel the credit card account before the increase or change goes into effect. If a consumer cancels an account, the creditor is generally prohibited from applying the increase or change to the account.
- Creditors generally must mail or deliver periodic statements for credit cards and other open-end consumer credit accounts at least 21 days before payment is due.

The FRB acknowledged in the interim final rule that meeting the 21-day requirement by August 20, 2009 may be difficult for various reasons. As a remedy for this issue relative to open-end credit other than credit cards, and for a short period after August 20, 2009, the FRB recommended disclosing elsewhere on or with the periodic statement that the payment will not be treated as late for any purpose if received within 21 days after the statement was mailed or delivered. The full text of this remedy may be found on page 36082 of the interim final rule as published in the Federal Register. 74 Fed. Reg. 36077, 36082 (July 22, 2009).

The interim final rule published in the Federal Register is available at: <http://edocket.access.gpo.gov/2009/pdf/E9-17195.pdf>. This publication includes the amendments to Regulation Z, a section by section analysis, and official staff interpretations. The Credit CARD Act is available from the Government Printing Office at: <http://www.gpo.gov/fdsys/pkg/PLAW-111publ24/pdf/PLAW-111publ24.pdf>. NCUA encourages you to review the interim final rule and Credit CARD Act in order to begin preparing for the remaining revisions and amendments which will become effective in 2010.

The Credit CARD Act's provisions and the FRB's implementing regulation, with respect to credit cards, are similar to the Unfair or Deceptive Acts or Practices (UDAP) rule (NCUA Rules & Regulations, Part 706) issued on January 29, 2009 with an effective date of July 1, 2010. See 74 Fed. Reg. 5498 (January 29, 2009). Creditors should note the effective dates under the Credit CARD Act and the FRB regulation are generally sooner and, also, that the scope of the Credit CARD Act and the FRB's regulation is broader, applying to all open-end credit, not only credit cards. For more information about the Credit CARD Act relative to the UDAP rule, see NCUA's July 1, 2009 press release at: http://www.ncua.gov/news/press_releases/2009/MR09-0701.htm. The UDAP rule published in the Federal Register is available at: <http://edocket.access.gpo.gov/2009/pdf/E8-31186.pdf>.

Should you have questions about the Regulation Z amendments, please do not hesitate to contact your NCUA regional office or state supervisory authority.

Sincerely,

Michael E. Fryzel
Chairman

Appendix

Credit CARD Act & Effective Dates

(1) Unless otherwise stated, the sections below modify TILA.

(2) Only provisions that apply to creditors are listed (i.e. provisions requiring Agencies or non-creditors to take certain actions are not addressed in this Appendix).

| Sec. | Effective Date | Description |
|--------|----------------|---|
| 101(a) | 08/20/2009 | Requires a creditor to provide written notice not later than 45 days prior to the effective date of: (1) any increase in an annual percentage rate (APR); and (2) any significant change, as determined by rule of the Federal Reserve Board, in the terms of the cardholder agreement (including an increase in fees or finance charges). |
| 106(b) | 08/20/2009 | Revises requirements for the timing of payments and the grace period. Requires each periodic statement of payment due to be mailed at least 21 days before the payment due date or grace period expiration date. |
| 101(b) | 02/22/2010 | Prohibits a creditor from increasing any annual percentage rate (APR) of interest, fee, or finance charge applicable to the existing balance on an open end consumer credit card account unless specified conditions are met: (1) expiration of a specified time period (e.g. promotional period) disclosed clearly and conspicuously to the consumer before commencement of the time period; (2) a variable APR tied to an index not under the creditor's control; (3) payment not received within 60 days after the due date; or (4) completion of a workout or temporary hardship arrangement, or the consumer's failure to comply with such an arrangement. Prohibits any APR increase relating to such an arrangement from exceeding the APR applicable to the particular category of transactions on the day before the effective date of the arrangement. Prohibits a creditor from changing the terms governing repayment of an outstanding balance, but permits the creditor to provide the obligor with specified repayment methods. |
| 101(d) | 02/22/2010 | Declares that no increase in any APR, fee, or finance charge, with certain exceptions, shall be effective before the end of the one-year period beginning on the date on which the account is opened. States that, in the case of a promotional rate, no written notice of an increase in the APR shall be effective before the end of a six-month period beginning from the date the promotional rate takes effect. |
| 102(a) | 02/22/2010 | Prohibits imposition of a finance charge, with certain exceptions, upon a credit card account balance that is based on balances for days in billing cycles preceding the most recent billing cycle (double billing cycle) as a result of the loss of any grace period. Prohibits penalties for on-time payments. Prohibits the charge of an over-the-limit fee unless the consumer expressly permits the creditor to complete the relevant transaction (opt-in). |

| Sec. | Effective Date | Description |
|--------|----------------|---|
| | | <p>Allows imposition of an over-the-limit fee only once during a billing cycle. Prohibits its imposition more than once in two subsequent billing cycles with respect to such excess credit, unless the consumer: (1) has obtained an additional extension of credit in excess of the credit limit during any such subsequent cycle; or (2) reduces the outstanding balance below the credit limit as of the end of such billing cycle.</p> <p>Prohibits a creditor from imposing a separate fee related to the method of payment (by mail, electronic transfer, telephone authorization, or other means), unless the payment involves an expedited service by the creditor's service representative.</p> |
| 103 | 02/22/2010 | Limits the use of the term "fixed," in conjunction with an APR or applicable interest rate, to a rate that will not change or vary for any reason over the period specified clearly and conspicuously in the terms of the account. |
| 104 | 02/22/2010 | <p>Requires a creditor to promptly credit a consumer's payment if received by 5:00 pm on due date.</p> <p>Requires a card issuer, upon receipt of payment, to apply amounts in excess of the minimum payment amount first to the balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest, until the payment is exhausted.</p> <p>Requires a creditor to allocate the entire amount paid in excess of the minimum payment to a balance on which interest is deferred during the last two billing cycles immediately preceding the expiration of the period during which interest is deferred.</p> <p>Prohibits a card issuer from imposing any late fee or finance charge for a late payment if: (1) the issuer makes a material change in the mailing address, office, or procedures for handling cardholder payments; and (2) such change causes a material delay in the crediting of payment made during the 60-day period following the date on which such change took effect.</p> |
| 105 | 02/22/2010 | <p>Prescribes a standard for the initial issuance of subprime or "fee harvester" cards (accounts requiring first-year fee payments in excess of 25% of the total amount of credit authorized).</p> <p>Prohibits payment of any fee from the credit made available by the card (other than any late fee, over-the-limit fee, or any fee for a payment returned for insufficient funds).</p> |
| 106(a) | 02/22/2010 | Requires the payment due date to be the same day each month, or the next business day if such date falls on a weekend or holiday. |
| 107 | 02/22/2010 | Revises civil penalties for creditor noncompliance with TILA. Includes in such penalties twice the amount of |

| Sec. | Effective Date | Description |
|------|----------------|--|
| | | any finance charge in connection with a transaction, between \$500 and \$5,000 (or a higher amount in the case of an established pattern or practice of noncompliance), in the case of an individual action relating to an open end consumer credit plan that is not secured by real property or a dwelling. |
| 109 | 02/22/2010 | Requires a card issuer to consider the ability of the consumer to make required payments as a prerequisite to opening any consumer credit card account, or increasing any credit limit. |
| 201 | 02/22/2010 | Revises and expands requirements for mandatory minimum payment disclosures a creditor must furnish. Directs the Federal Reserve Board to issue guidelines, by rule, for the establishment and maintenance by creditors of a toll-free telephone number for purposes of providing information about accessing credit counseling and debt management services. |
| 202 | 02/22/2010 | Revises requirements relating to late payment deadlines. Requires specified disclosures relating to increases in interest rates for late payments. States that the date on which the obligor makes a payment at the local branch of a creditor financial institution shall be considered to be the date on which the payment is made for purposes of determining whether a late fee or charge may be imposed due to the failure of the obligor to make payment on or before the due date for such payment. |
| 203 | 02/22/2010 | Requires a card issuer that has changed or amended any term of the account since the last renewal that has not been previously disclosed to make such a disclosure to the consumer by a certain deadline. |
| 204 | 02/22/2010 | Requires creditors to post on an Internet site the written agreement between the creditor and the consumer for each open-end consumer credit plan. |
| 205 | 02/22/2010 | Amends the Fair Credit Reporting Act to require any advertisement for a free credit report to disclose prominently that free credit reports are available under federal law at AnnualCreditReport.com (or other authorized source). |
| 301 | 02/22/2010 | Prohibits extensions of credit to consumers under age 21, unless the consumer has submitted a written application that meets specified requirements. Requires any such application to be signed by a cosigner, including the parent, legal guardian, spouse, or any other individual who has attained the age of 21 having a means to repay debts incurred by the consumer in connection with the account. |
| 302 | 02/22/2010 | Amends the Fair Credit Reporting Act to permit a consumer reporting agency to furnish a consumer report regarding credit or insurance transactions that are not initiated by the consumer only if the report does not contain a date of birth that shows that the consumer has not attained the age of 21, or, if the date of birth on |

| Sec. | Effective Date | Description |
|--------|----------------|--|
| | | the consumer report shows that the consumer has not attained the age of 21, the consumer consents to the furnishing of such report. |
| 303 | 02/22/2010 | Requires approval by the jointly liable party to increase credit lines for accounts for which a parent, legal guardian, spouse of the consumer, or any other individual is jointly liable. |
| 304 | 02/22/2010 | Requires an institution of higher education to disclose publicly any agreement made with a card issuer or creditor for the purpose of marketing a credit card. Prohibits a card issuer or creditor from offering to a student at an institution of higher education any tangible item as inducement to participate in an open end consumer credit plan if such offer is made: (1) on or near the campus of the institution; or (2) at an event sponsored by or related to such institution. |
| 305 | 02/22/2010 | Requires each creditor to submit an annual report to the Federal Reserve Board containing the terms and conditions of all business, marketing, and promotional agreements and college affinity card agreements with an institution of higher education, or with an affiliated or related alumni organization or foundation, with respect to any college student credit card issued to a college student at such institution. |
| 101(c) | 08/22/2010 | Requires a creditor that increases the APR based upon factors including the obligor's credit risk, market conditions, or other factors to, at least once every six months: (1) consider changes in such factors in subsequently determining whether to reduce the APR for such obligor; and (2) reduce the APR when a review indicates a reduction. |
| 102(b) | 08/22/2010 | Requires any penalty fee or charge to be reasonable and proportional to the omission or violation involved. |
| 401 | 08/22/2010 | Amends the Electronic Fund Transfer Act to declare unlawful: (1) the imposition of a dormancy fee, an inactivity charge or fee, or a service fee with respect to a gift certificate, store gift card, or general-use prepaid card; and (2) the sale or issuance of a gift certificate, store gift card, or general-use prepaid card that is subject to an expiration date. |